

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

**Adopted and Filed**

**Rulemaking related to biofuel compatibility with underground storage tanks**

The Environmental Protection Commission (Commission) hereby amends Chapter 135, “Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks,” Iowa Administrative Code.

*Legal Authority for Rulemaking*

This rulemaking is adopted under the authority provided in 2022 Iowa Acts, House File 2128, section 32, signed by Governor Kim Reynolds on May 17, 2022.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code chapter 455G as amended by 2022 Iowa Acts, House File 2128.

*Purpose and Summary*

Chapter 135 regulates underground storage tanks used for the storage of regulated substances. This rulemaking aligns the administrative rules in that chapter with 2022 Iowa Acts, House File 2128, which recently amended Iowa Code chapter 455G. The legislation requires that all new, replacement, or converted gasoline or diesel fuel storage and dispensing infrastructure be compatible with E-85 and B-20 fuels, respectively.

*Public Comment and Changes to Rulemaking*

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on February 8, 2023, as **ARC 6884C**. A public hearing was held on February 28, 2023, at 1 p.m. in Conference Room 5 West, Wallace State Office Building, Des Moines, Iowa.

Mr. John Maynes of FUEL Iowa attended the public hearing. Mr. Maynes’s comments were associated with Items 1, 3, 4, and 5 as they pertain to House File 2128, specifically in regard to the requirement for owners and operators to document compatibility and capability of equipment and in regard to DNR Form 542-1336 (UST System Checklist for Equipment Compatibility) and DNR Form 542-0510, Item 10, page 2 of 9 (Equipment Repair and Replacement Form). Prior to final implementation of the aforementioned forms, and the need for owners and operators to maintain records, Mr. Maynes believed that there are some points of House File 2128 that need further clarification so that owners and operators can complete the forms correctly once the final understanding of the regulation is determined. Mr. Maynes requested that the Department of Natural Resources (Department) consider convening a stakeholder group to evaluate and review the forms and to refine the forms to help owners and installers complete the forms in a proper manner to implement the rules and the intent of the legislation. The Department agreed to review the aforementioned existing forms and present the forms to Mr. Maynes and Iowa licensed installers for comment and consideration. However, this agreement does not require changes to the rules. Therefore, no changes from the Notice have been made based on these comments.

One nonsubstantive grammatical change was made to cross-references in paragraph 135.4(3)“c.”

*Adoption of Rulemaking*

This rulemaking was adopted by the Commission on April 18, 2023.

### *Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa. A copy of the fiscal impact statement is available from the Department upon request.

### *Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found. A copy of the jobs impact statement is available from the Department upon request.

### *Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

### *Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

### *Effective Date*

This rulemaking will become effective on September 27, 2023.

The following rulemaking action is adopted:

ITEM 1. Amend paragraph **135.4(3)“b”** as follows:

*b.* Owners and operators must have a UST installer licensed under 567—Chapter 134, Part C, submit the department's checklist for equipment compatibility for the UST system to the department at least 30 days prior to switching to a regulated substance containing greater than 10 percent ethanol or greater than 20 percent biodiesel, or any other regulated substance identified by the department.

ITEM 2. Adopt the following new paragraph **135.4(3)“c”**:

*c.* A retail dealer, as defined in Iowa Code section 214A.1, must show compliance with the requirements of Iowa Code sections 455G.32 and 455G.33, if applicable, by submitting and maintaining the applicable reporting and record-keeping documentation listed in subparagraphs 135.4(5)“a”(10), 135.4(5)“a”(11), 135.4(5)“b”(12), and 135.4(5)“b”(13).

ITEM 3. Amend subparagraph **135.4(5)“a”(9)** as follows:

(9) Notification prior to UST systems switching to certain regulated substances;

ITEM 4. Adopt the following new subparagraph **135.4(5)“a”(10)**:

(10) Documentation establishing compatibility and capability as required in Iowa Code section 455G.32, if applicable;

ITEM 5. Adopt the following new subparagraph **135.4(5)“a”(11)**:

(11) Documentation establishing compatibility and capability as required in Iowa Code section 455G.33, if applicable.

ITEM 6. Amend subparagraph **135.4(5)“b”(11)** as follows:

(11) Documentation of compliance for spill and overfill prevention equipment and containment sumps used for interstitial monitoring of piping (135.4(12));

ITEM 7. Adopt the following new subparagraph **135.4(5)“b”(12)**:

(12) Documentation establishing compatibility and capability as required in Iowa Code section 455G.32, if applicable;

ITEM 8. Adopt the following **new** subparagraph **135.4(5)“b”(13)**:  
(13) Documentation establishing compatibility and capability as required in Iowa Code section 455G.33, if applicable.

[Filed 7/30/23, effective 9/27/23]

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EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 8/23/23.